

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

JOHN S. BIBB, ET. AL.

Application No. 09/587,544

Filed: June 5, 2000

For: PILOT HYDRAULIC CONTROL
FOR A PAIR OF STABILIZER
LEGS ON A BACKHOE LOADER
MACHINE

Attorney Docket No. 00-318

Art Unit: 3618

Examiner: C. BOTTORFF

Paper No.: 10

Peoria, Illinois 61629-6490

January 23, 2002

Assistant Commissioner for Patents
Washington, D.C. 20231

PETITION UNDER 1.183 TO WAIVE RULES UNDER 1.134

Sir:

Applicant respectfully petitions the Commissioner under 37 CFR 1.183 to waive the rules under 37 CFR 1.134 so that the time period for reply to an Office Action for the above-mentioned patent application may be reset.

STATEMENT OF FACTS

Applicant is submitting this petition due to the fact that the Examiner did not receive Applicants' Amendment After Final Rejection ("Amendment") prior to the due date of July 30, 2002. However, the Amendment was submitted by Applicant to the Patent and Trademark Office on July 25, 2002 (with a Certificate of Mailing dated 7/25/2002).

On or about January 7, 2003, Applicant was notified by the Examiner that the Amendment was not received. In response to the notification, Applicant faxed a copy of the Amendment, and accompanying Certificate of Mailing, to the Examiner on January 8, 2003.

The Examiner sent Applicant an Advisory Action on January 10, 2003 wherein the period for reply was set to expire three (3) months from the mailing date of the final rejection. Due to the fact that the final rejection for the above-mentioned patent application was July 30, 2002, it would be impossible to submit a reply on the Advisory Action given that 37 CFR 1.134 sets the maximum period for reply at six months.

POINT OF REVIEW AND ACTION REQUESTED

Given the facts set forth above and Applicant's inability to reply to the Advisory Action under 37 CFR 1.134, Applicant respectfully submits that the period for reply should be reset. In that regard, Applicant respectfully requests that the period of reply for the Advisory Action should be set from the mailing date of the Advisory Action itself and not the final rejection. This will allow Applicant to file the Notice of Appeal with a one-month extension of time.

CONCLUSION

Applicant respectfully submits that this petition is requested in an extraordinary situation and that it is just to waive the rules so that Applicant may proceed with a Notice of Appeal under a one-month extension of time. Given that Applicant was not at fault in this situation, Applicant respectfully requests that the period of reply be reset.

Please charge the required fee under 37 CFR 1.17(h) for the petition to the Applicant's debit account, duplicate copies of the fee transmittal sheet are attached hereto.

Respectfully submitted,



Diana L. Charlton
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JUL 17 2003

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/587,544	06/05/2000	John S. Bibb	00-318	9972

7590 01/10/2003
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EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT PAPER NUMBER

3618

DATE MAILED: 01/10/2003

DUE : 7/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/587,544

Applicant(s)

BIBB ET AL.

Examiner

Christopher Bottorff

Art Unit

3618

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 July 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-6 and 8-18

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: the arguments only highlight the difference of opinion between the examiner's interpretation of the prior art relative the the pending claims and Applicants' interpretation. The examiner maintains that the limitations of the present claims are taught by Phillips and Frase et al. and the combination of these references is proper, as discussed in the final rejection. In regard to claim 5, the amendment would simplify matters for appeal and will be entered upon the filing of an appeal brief.

Christopher Bottorff

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